

## Message Text

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ACTION EB-07

INFO OCT-01 EUR-12 IO-10 ISO-00 COME-00 LOC-01 SS-15 NSC-05

SAJ-01 L-02 CIAE-00 DODE-00 INR-07 NSAE-00 PA-01

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R 121346Z MAY 75

FM AMEMBASSY BONN

TO SECSTATE WASHDC 9983

INFO USMISSION USBERLIN

USMISSION GENEVA

AMEMBASSY BERLIN

LIMITED OFFICIAL USE SECTION 01 OF 02 BONN 07552

E.O. 11652: N/A

TAGS: EIND, PFOR, SZ, GW, GE

SUBJECT: GDR - ACCESSION TO AND RE-APPLICATION OF  
TREATIES; INDUSTRIAL PROPERTY CONVENTION

REFS: (A) STATE 57998; (B) STATE 99911; (C) BONN 5125

1. AS INDICATED IN REFTEL (C), ALLIES AND FRG HAVE BEEN WORKING ON THE DIFFERENT PROBLEMS INVOLVED IN THE GDR ACCESSION TO AND RE-APPLICATION OF TREATIES. WE HAVE HAD TRIPARTITE DISCUSSIONS, MOST RECENTLY MAY 6, ON QUESTION POSED BY WIPO. FRENCH AND UK REPS EXPRESSED SOME DISAPPOINTMENT WITH US STATEMENT ON THE MATTER CONTAINED IN REFTEL (A). IN PARTICULAR, THEY HAD HOPED FOR MORE DETAILED REACTIONS TO THE UK MEMORANDUM OF NOVEMBER 26, 1974 (CONVEYED TO SMALL, L/EUR BY PFUND LETTER OF DECEMBER 4, 1974), INCLUDING VIEWS ON THE DISTINCTION SEEN BY UK BETWEEN PRE-WWII TREATIES TO WHICH GERMANY WAS A PARTY AND THEIR RE-APPLICATION TO THE GDR, AS OPPOSED TO TREATIES CONCLUDED AFTER WWII TO WHICH GDR ACCEDED IN PRE-RECOGNITION PERIOD. IN ADDITION, FOLLOWING QUESTIONS WERE RAISED BY UK AND  
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FRENCH EMBASSY REPS:

(A) ARE NOT "PRIVATE RIGHTS" AT LEAST ULTIMATELY

AFFECTED BY ALMOST ALL TREATIES TO WHICH GDR HAS OR MAY BECOME PARTY, AND IF NOT, WHAT ARE THE CRITERIA FOR DISTINGUISHING THOSE THAT DO AFFECT PRIVATE RIGHTS FROM THOSE THAT DO NOT.

(B) RE STATEMENT IN PARA 2 OF REFTTEL (A) THAT "WE ARE AWARE OF NO SUCH CASES FOR US", QUESTION WAS RAISED WHAT "SUCH CASES" REFERS TO, THIS NOT BEING CLEAR TO US FROM PRECEDING SENTENCES OF PARA 2.

(C) UK REP IN PARTICULAR ASKED FOR US REACTION TO UK VIEW ON WIPO CONVENTIONS CONTAINED PARA 8 OF UK MEMORANDUM, TO EFFECT THAT DATE OF ORIGINAL APPLICATION TO REICH SHOULD ALSO BE APPLICABLE FOR GDR, PERIOD OF SUSPENSION FOR GDR BEING CONSIDERABLY LONGER THAN THAT FOR FRG.

2. UK AND FRENCH REPS ASKED THAT BONN GROUP DISCUSSION OF THIS MATTER BE DELAYED UNTIL CLARIFICATION OF DEPARTMENT'S VIEWS HAS BEEN TRIPARTITELY DISCUSSED. THEY ASKED THAT USG DELAY MAKING STATEMENT CONCERNING GDR ACCESSION TO WIPO CONVENTION UNTIL MATTER FURTHER DISCUSSED IN ORDER TO PERMIT ACHIEVEMENT OF FINAL VIEWS AS UNIFORM AS POSSIBLE BASED ON REVIEW OF INFORMATION ON EACH OTHER'S POSITIONS. UK AND FRENCH REPS SAID THEY WOULD BE REPORTING US VIEWS CONVEYED SO FAR, AND PARTICULARLY WILL SEEK REACTION TO PROPOSED US NOTE TO WIPO (STATE 65934).

3. EMBASSY HAS NOTED FROM BUNDESTAG QUESTION AND ANSWER THAT AFTER SUBMISSION OF ITS MEMO IN BONN GROUP (COPY TRANSMITTED TO DEPARTMENT WITH UK MEMORANDUM), FRG IN LATE 1974/EARLY 1975 OFFICIALLY ANNOUNCED ITS VIEWS CONCERNING DATE ON WHICH CERTAIN CONVENTIONS BECAME EFFECTIVE BETWEEN FRG AND GDR WITHOUT FURTHER DISCUSSION IN BONN GROUP. PARLIAMENTARY QUESTION ASKED WHY ON BASIS OF THESE ANNOUNCEMENTS THE STOCKHOLM VERSION OF PARIS CONVENTION ON PROTECTION OF INDUSTRIAL PROPERTY, BERN CONVENTION FOR PROTECTION OF WORKS OF LITERATURE AND ART, AND AREA OF APPLICATION OF CONVENTION ON ESTABLISHMENT OF WORLD ORGANIZATION LIMITED OFFICIAL USE  
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FOR INTELLECTUAL PROPERTY CAME INTO FORCE BETWEEN FRG AND GDR ON NOVEMBER 24, 1972 AND NOT AT TIME PROVIDED FOR IN RESPECTIVE FINAL CLAUSES OF THESE CONVENTIONS. FRG FONOFF STATE MINISTER MOERSCH STATED THAT WHILE THE GDR DECLARED ITS ACCESSION TO THE LATTERMOST CONVENTION (OF JULY 14, 1967) ON MAY 20, 1968, GDR DID NOT AT THAT TIME MEET MEMBERSHIP PREREQUISITES SET OUT IN ARTICLE 14 IN CONNECTION WITH ARTICLE 5 OF THAT CONVENTION. THESE PROVIDE THAT ONLY SUCH STATES CAN BECOME MEMBERS OF THE ORGANIZATION AS ARE MEMBERS

OF THE UN OR ONE OF ITS SPECIALIZED ORGANIZATIONS.  
ONLY WITH THE EFFECTIVE DATE OF ITS ACCESSION TO  
UNESCO ON NOVEMBER 24, 1972 DID THE GDR MEET THIS  
PREREQUISITE. MOERSCH SAID PARIS AND BERN CONVENTIONS

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PROVIDE FOR ACCESSION OF NON-UNION STATES TO BECOME  
EFFECTIVE THREE MONTHS AFTER NOTIFICATION OF ACCESSION  
BY DIRECTOR GENERAL. GDR DECLARED ACCESSION TO BOTH  
ON MAY 20, 1968; HOWEVER, AT THAT TIME GDR ACCESSION  
COULD NOT BECOME EFFECTIVE IN RELATION TO FRG AS GDR  
WAS NOT RECOGNIZED BY FRG. RECOGNITION FOLLOWED ENTRY  
INTO FORCE OF FRG/GDR BASIC TREATY OF JUNE 21, 1973.  
AS, HOWEVER, PARIS AND BERN UNIONS, CREATED BY THESE  
TWO CONVENTIONS, ARE AMONG ORGANIZATIONS ADMINISTERED  
BY THE WIPO, FEDERAL GOVERNMENT ACCEPTED NOVEMBER 24,  
1972 AS THE DATE FOR THEIR ENTRY INTO FORCE AS BETWEEN  
FRG AND GDR. MOERSCH AFFIRMED THAT THERE WAS UNILATERAL  
DECISION BY FRG ON THIS QUESTION AND THAT NO AGREEMENT  
WAS CONCLUDED BETWEEN FRG AND GDR CONCERNING DATE ON

WHICH THESE CONVENTIONS WOULD BECOME EFFECTIVE BETWEEN  
FRG AND GDR.

4. COMMENT: WHILE FRG, AS RESULT OF ITS SPECIAL SITUA-  
TION VIS-A-VIS GDR, APPEARS TO HAVE GIVEN DATE OF ENTRY  
INTO FORCE OF FRG/GDR BASIC TREATY (JUNE 21, 1973)  
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SPECIAL IMPORTANCE, ITS ANNOUNCED POSITION MAKING DATE  
OF GDR ACCESSION TO UNESCO DETERMINATIVE IN CONTEXT  
OF GDR ACCESSION TO TREATIES WITH VIENNA FORMULA  
APPEARS SIMILAR TO US POSITION (FRG MAKING DATE OF  
MEMBERSHIP DETERMINATIVE, STATE IN REFTEL (A) MAKING  
DATE OF US VOTE (ON WHAT ORGANIZATION?) WITHOUT  
DISCLAIMER THE DETERMINATIVE DATE) EXCEPT WHEN PRIVATE  
RIGHTS ARE INVOLVED. WE BELIEVE THAT IT WOULD BE  
DESIRABLE FOR US, UK, AND FRANCE TO SEEK TO ADOPT  
UNIFORM POLICY IN ORDER TO ACHIEVE GREATER LEGAL  
CERTAINTY AS TO DATE ON WHICH TREATIES ENTER INTO  
FORCE BETWEEN THEM AND GDR. WE WONDER WHETHER OTHER-  
WISE EARLIER DATE FOR PARTICULAR TREATY, ACCEPTED BY  
ONE OR BOTH OF THE OTHER STATES OR MANY FURTHER STATES,  
MIGHT NOT GIVE RISE TO POSSIBLE LEGAL ACTION IN THE  
THIRD STATE BASED ON THEORY UNDERLYING EARLIER APPLI-  
CABILITY IN THE OTHER STATES. IT APPEARS THAT PROPOSAL  
TO ANNOUNCE ENTRY INTO FORCE AT FUTURE DATE, BASED ON  
CONCEPT THAT TREATY AFFECTS PRIVATE RIGHTS, WOULD  
REQUIRE CLEAR DEFINITION OF CRITERIA FOR DETERMINING  
WHETHER TREATY DOES SO TO ENABLE EMBASSY TO MAKE  
CONVINCING PRESENTATION TO UK AND FRENCH.

5. ACTION REQUESTED: EMBASSY WOULD APPRECIATE FURTHER  
GUIDANCE ON BASIS OF WHICH TO REPLY TO ABOVE QUESTIONS  
AND TO ENABLE EMBASSY TO REACT TO VIEWS EXPRESSED IN  
UK EMBASSY MEMORANDUM OF NOVEMBER 26, 1974.  
HILLENBRAND

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